

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	CC Docket No. 98-146
Advanced Telecommunications Capability	)	
to All Americans in a Reasonable and	)	
Timely Fashion, and Possible Steps	)	
to Accelerate Such Deployment Pursuant to	)	
Section 706 of the Telecommunications Act	)	

**REPLY COMMENTS OF THE  
RUBY RANCH INTERNET COOPERATIVE ASSOCIATION**

The Ruby Ranch Internet Cooperative Association (the “Coop”), submits this reply to the comments filed by Qwest Communications International, Inc. (“Qwest”).

Residents of Ruby Ranch, Summit County, Colorado formed the Coop to provide advanced services (SDSL) to themselves because no one (including Qwest) wants to serve our neighborhood. We have purchased the necessary equipment (DSLAM and modems) to provide high-speed Internet access, but need access to Qwest subloops to commence service. Although Qwest has ample unused subloops that it could rent to the Coop (over 200 when we need perhaps 20 or 30 subloops), Qwest refuses to provide subloops on reasonable terms and conditions, with Qwest taking the position that its interconnection proposals are non-negotiable. The Coop has been compelled to file a complaint against Qwest (EB-01-MDIC-0028), and it will now be the FCC that determines if and when the residents of Ruby Ranch will enjoy the benefits of “always on,” high-speed Internet access.

According to Qwest, the Commission “should focus its efforts under Section 706 on three areas”:

1. Rely on “free markets and private enterprise” so Qwest is not required to provide advanced services to places like Ruby Ranch so residents in more rural areas can receive the same set of services available to those enjoyed today by residents of metropolitan areas;
2. Inconsistent with the first principle, the FCC should “press” the issue of investment tax credits with Congress (but make sure the credits can be “carried forward for a reasonable number of years” because Qwest generates so much cash); and
3. “Dismantle barriers to deployment” of advanced service, including
  - (a) Regulate Qwest like cable companies because different regulations are inhibiting Qwest’s ability to complete (although Qwest does not provide a single fact in support of this assertion); and
  - (b) Limit the role that local governments can play over ILEC use of their local rights-of-way because localities supposedly are imposing “unreasonable conditions” that result in “excessive costs.”

The Coop, not surprisingly perhaps, sees the world in a different light.

In Section 706(a), Congress stated that the Commission “shall encourage on a reasonable and timely basis of advanced telecommunications capability to all Americans.” In Section 706(b), Congress further specified that the Commission shall take “immediate action” if it determines that advanced services are not being deployed to “all Americans.”

Given this clear Congressional directive, the Commission’s “focus” should not be on companies that generate hundreds of millions of dollars in cash each year. Rather, its focus should be first and foremost, on those parts of the country where no advanced services are available today (like Ruby Ranch) and secondly and as time permits, on those parts of the country where consumers have a choice of only one advanced service provider. Consumers obviously benefit when they have a choice in advanced services

providers. It is simply unacceptable in the 21<sup>st</sup> Century that there remain areas of the country where no advanced services are available to residents.

There is one point that should be uncontested. The Commission cannot grant Qwest's request that it be freed of any obligation to provide advanced services to areas that it deems undesirable while simultaneously granting Qwest relief from "unbundling and other regulatory obligations." Qwest has not chosen to serve our neighborhood. Fair enough. But Qwest cannot legitimately request that it be also relieved of the obligation to provide unbundled network elements ("UNEs") in areas where Qwest has chosen not to serve. Advanced services will never become available to "all Americans" if incumbent LECs can pick-and-choose where they provide their services while concurrently deciding they need not provide needed UNEs so Americans can self provision their own advanced services in areas that Qwest chooses not to serve.

The Coop agrees with Qwest that it is rather odd that incumbent LECs must unbundle their networks while cable companies that provide the same functionality need not unbundle their networks. Our Coop would much prefer having the opportunity to discuss subloop rental from two companies rather than one (although in our particular situation, Qwest has far more available subloops than does the local cable company). But the decision to impose different regulatory obligations on incumbent LECs and cable companies was one that Congress deliberately made. We question whether an administrative agency like the FCC has the flexibility to discard the clear directives of its superiors. Indeed, if as Congress has said, the objective is to ensure that advanced capabilities become available on a "timely basis . . . to all Americans," the Commission certainly cannot relieve incumbent LECs from providing UNEs in areas where they choose not to provide their

own advanced services. The FCC must either require ILECs to provide DSL to all of their customers or ILECs must be required to provide reasonably priced UNEs to all Americans so they can provide advanced services to themselves. Incumbent LECs like Qwest cannot have it both ways.

Qwest complains that the unbundling rules subject it to unspecified costs. The Coop expects this statement is accurate, since the unbundling rules “force” Qwest to spend time negotiating with interconnecting carriers or defending complaints when, as in the case of the Coop, Qwest unilaterally decides to make most of the terms of interconnection non-negotiable. But Qwest also fails to note the benefits of this “legal obligation.” In our case, Qwest has approximately 220 subloops installed in our neighborhood that it is not using. We propose to rent 30 or so of these subloops, and our rental would provide a new recurring revenue stream that it would never otherwise enjoy. Qwest would benefit even if the Coop paid only \$1 monthly for each subloop, since Qwest would realize each month \$20 in new revenues that it would not otherwise receive. (Actually, the benefit to Qwest would be far larger since Internet traffic would be moved from Qwest dial-up service to Coop-provided DSL rented lines, which would enable Qwest to lengthen the life span of its serving central office.)

The Coop reads with some amusement Qwest’s complaints about local governments. Qwest complains that local governments impose “unreasonable regulations” and “unreasonable conditions” that impose “excessive costs” upon service providers. One would ordinarily expect that a firm subjected to the excesses of monopoly power would tread more lightly in areas where it possesses monopoly power. Unfortunately, as our September 4, 2001 complaint documents (EB-01-MDIC-0028), Qwest has not learned

this basic lesson in human behavior. The Coop finds astonishing (outrageous, may be more accurate), that Qwest wants the Commission to relieve it of monopoly power exercised by others, but also to sanction *via* regulatory forbearance the monopoly power that it exercises over the Coop and similarly situated folks wanting to self provision their own advanced services.

Respectfully submitted,

**Ruby Ranch Internet Cooperative  
Association**

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